IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24715 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH Sd/-

HONOURABLE MR.JUSTICE K.A.PUJ Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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RAMANLAL ASHARAM SHARMA C/O. RAMANLAL ASHARAM SHARMA & 20 - Petitioners

Versus

THE STATE OF GUJARAT THROUGH SECRETARY & 2 - Respondents

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Appearance :
MR YATIN N OZA, SENIOR ADVOCATE WITH MR APURVA R KAPADIA WITH MS SRUSHTI A THULA for Petitioners.
MR SUNIT SHAH, GP for Respondent No. 1.
MR PRASHANT G DESAI for Respondent Nos. : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 22/08/2007
CAV JUDGMENT
(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. The petitioners, in all 21 in numbers, have filed this petition under Article 226 of the Constitution of India praying for the direction to the respondents, more particularly, the respondent Nos. 2 & 3 – Ahmedabad Municipal Corporation to permanently restrain them from demolishing the shops-cum-residence of the petitioners. The petitioners have also prayed for quashing and setting aside the Town Planning Scheme No. 49, Ahmedabad with respect to Survey Nos. 191/1 and 191/2 with all consequential and incidental effects and to vary the scheme accordingly.

2. This Court issued notice on 29.11.2006 and order of status-quo was passed. This order of status-quo is continued till this date. Originally, the petition was ordered to be heard along with Special Civil Application No. 14564 of 2007 and Special Civil Application No.8810 of 2007. However, by an order dated 09.07.2007, this Court has made it clear that the hearing of this petition need not wait till hearing of the other petitions being Special Civil Application No. 14564 of 2007 and Special Civil Application No.8810 of 2007. The Court peremptorily fixed the hearing of the petition on 16.07.2007.

After considering the objection raised by the Corporation against any further adjournment in the matter, as the land in question is required for widening of the road as per the Town Planning Scheme and the original occupants of the land in question which is required for widening the road, have already been given alternative accommodation and, therefore, the petitioners who claimed to be the purchasers from those original occupants have no case in law or in equity.

3. It is in the above background of the matter, the petition is taken up for final hearing.

4. It is the case of the petitioners that the petitioners are very poor persons having their small shops-cum-residence on Rajendra Park road area, Ahmedabad and they are doing their small business in the said shops-cum-residence owned by them for the last more than 35 years. The petitioners have invested their hard earned money in their shops-cum-residence and are maintaining their families with great difficulties with the help of businesses, which are carried out by them in the said shops-cum-residence. It is also the case of the petitioners that the respondents want to make 100 Feet town planning road and for that purpose, the shops-cum-residence of the petitioners are to be demolished. Earlier, a 30 meter town planning road was to be carved out as per the

Town Planning Scheme which was a straight road. But now with a view to see that the land which was going on the other side of the road is saved and some other marginal land is given to the owners of the society on the other side i.e. on the northern side and for that purpose, a curve has been made in the road and the petitioners' shops-cum-residence are to be demolished for the said purpose. According to the petitioners, the action of the respondents is prima facie a malafide action and it is taken only with a view to favour and benefit Kamdar Society, who had contacts with higher authorities.

5. It is also the case of the petitioners that they have purchased the shops-cum-residence from the owners of the land of Survey No. 191/1 and 191/2 in the year 1970 and since then, the petitioners are doing petty businesses in the said shops-cum-residence and are running their livelihood to feed their families. The landowners have sold the shops-cum-residence to the petitioners and other lands were also sold to some other persons and thereafter, they have lost their interest in the lands. In the year 1986, the eastern part of the Ahmedabad, namely, Rajendra Park Road etc. was vested in the respondent No. 2 Corporation and prior to that the lands in question were given under the Odhav Nagar Panchayat and the said constructions were made as per the rules and

regulations of the Panchayat after taking permission from the Nagar Panchayat. After the lands in question came within the limits of the respondent No. 2 – Corporation, the Town Planning Scheme appears to have been prepared. While preparing the draft scheme, the survey of the area was not properly done and the Town Planning Scheme came to be drafted without making any survey of the lands and the constructions made on the said lands. As per the provisions of the Gujarat Town Planning and Urban Development Act, it is necessary to make a survey of the lands and the constructions on the lands and it is the bounden duty of the Town Planning Officer to see that the existing construction is not disturbed. It is the say of the petitioners that no such care was taken and the scheme was prepared. At no point of time, the petitioners were given any notices at the time of preparing the Scheme.

6. In the year 1972, a Draft Scheme was prepared in which some portion of the land of the petitioners were included. The said portion included the residential part of the petitioners and hence, the petitioner had raised objections. After receiving the said objections, the respondent No. 2 – Corporation had sanctioned another Draft Scheme in which the front portion of the petitioners' land was included. The preliminary Town Planning Scheme No. 49 came to be

sanctioned on 20.02.2004 and in the said Town Planning Scheme, 100 feet road has been given a curve in which the shops-cum-residence of the petitioners are greatly affected and on the other side of the road i.e. on the northern side, 20 feet of wide strip of land, which, belongs to the Government has been given extra to the land owners of the northern side i.e. Kamdar Society. In the Draft Scheme, the road was straight and thereafter in the preliminary scheme, the road has been given a curve to give benefit to the said persons. The petitioners were not aware of this development and now at this late stage, the petitioners were informed by the authorities that it is a matter of days that the shops-cum-residence would be demolished if they would not remove their construction by themselves.

7. Mr. Y. N. Oza, learned Senior Counsel appearing with Mr. Apurva R. Kapadia and Ms. Srushti A. Thulja for the petitioners submitted that the action of the respondents is prima facie bad, illegal and suffers from the vices of malafide. It is well settled position that the roads are to be made straight and only in unavoidable circumstances, the curves in the road are to be made. In the present case, initially, the road was straight but with a view to save the land and to give more marginal land to Kamdar Society, the curve has been made in the road. Initially, in the straight road, that was to

be constructed under the Town Planning Scheme, a part of the land from both the sides of the road was to be included. The owners of the northern part of the land i.e. the side opposite to the land owned by the petitioners, were even given a notice of payment of compensation in lieu of the land that is to be included under the Town Planning Scheme prepared in 1985. But for some apparently malafide and political reasons, a new Town Planning Scheme came to be prepared in which a curve was given to the straight road in such a manner that shops-cum-residence of the petitioners will be erased from the face of the map, just to favour members of the Kamdar Society. Mr. Oza has further submitted that it was incumbent upon the respondents to make the survey of the lands and the constructions made on the lands in the areas where the Town Planning Scheme is to be prepared but the respondents have failed to do so and without making proper survey of the lands and the constructions, have prepared the Town Planning Scheme No. 49, which deserves to be quashed and set aside.

8. Under the provisions of the Act, it is incumbent upon the respondents to invite objections while preparing the Scheme. The petitioners are in possession of the shops-cum-residence since 1970 and the scheme was framed in the year 1986, but at no point of time, any notice was issued and/or served to the

petitioners, otherwise, the petitioners would have raised objections and the present situation would not have arisen. He has further submitted that when the preliminary scheme has been finalised, respondents came to the shops-cum-residence and marked the boundaries and informed the petitioners that if they themselves did not remove the constructions made by them, then they would remove the constructions. He has further submitted that a resolution was passed in the Corporation on or around 08.06.2005 wherein it is stated that in the year 1986, the Town Planning Scheme has been prepared but that has not been prepared without stating the situation of the area and the constructions etc. made thereunder and large number of constructions of shops-cum-residence and houses are made in the northern and eastern zone for the persons belonging to poor or middle class strata and, therefore, with a view to consider their position, it is necessary that the Town Planning Scheme should be revised and the Scheme should be varied. For this purpose, the Town Planning Scheme Review Committee was formed under the said resolution and thereafter, Town Planning Scheme was framed without adhering to the provisions of the law and without making any survey of the constructions and the road etc. and, therefore, the said Town Planning Scheme deserves to be quashed and set aside.

9. Mr. Oza has further raised a legal issue and submitted that after the constitutional amendment inserted by way of Part IX (A) of the Constitution, Ahmedabad Municipal Corporation will have no jurisdiction or any right to act upon any Town Planning Scheme in a development plan, which has not been prepared by the Committee for metropolitan planning. Sections 9 to 21 of the Town Planning Act deals with preparation till the revision of the development plan. It is only after the development plan is sanctioned that the Town Planning Scheme can be framed in the area where the development plan operates. In other words, development plan for the entire urban development authority would be one and in that plan, there would be as many number of Town Planning Schemes as the authority may require. But after the amendment in the constitution, which came into effect from 01.06.1993, it will be the Committee for Metropolitan Planning under Article 243 ZE which will have authority to prepare plan and forward it. It is only after that plan, which the Committee for Metropolitan planning prepares and sends it for approval, that the plan can be sanctioned with or without modification and only thereafter the Town Planning Scheme can be framed in the area where the plan operates. He has, therefore, submitted that Article 243 ZE makes it obligatory on the every State legislature to bring its laws in consonance with the constitutional amendment. He has

further submitted that as per the provisions contained in Section 243 ZF, if any inconsistent law is in existence, it shall remain in force only for a period of one year and no longer. Therefore, the Town Planning Schemes which have been prepared in the development plan, which is not prepared and forwarded by Committee for Metropolitan Planning is a nullity and, therefore, no action can be taken if the Town Planning Scheme is prepared in a development plan which is not in consonance with the mandate of Article 243 ZE. Any state law permitting any area development authority to prepare the plan and forward it to the State Government for its sanction, would run counter to the mandate of Article 243 ZE. In support of this submission, Mr. Oza relied on the decision of the Hon'ble Supreme Court in the case of **Ahmedabad Urban Development Authority V/s. Manilal Gordhandas and others, AIR 1996 SUPREME COURT 2804** wherein it is held that the the draft development plan submitted to State Government by a municipal corporation, under Bombay Town Planning Act could not be sanctioned by the State Government after the repeal of Bombay Act and enforcement of the Gujarat Act of 1976. Provisions of Section 124(2) of the Gujarat Act would not save such plan as the provisions of Sections 9 to 17 of Gujarat Town Planning Act are inconsistent with Sections 7 to 10 of the Bombay Town Planning Act.

10. Mr. Oza has also invited our attention to the constitutional provisions contained in Article 243 W which makes it clear that Municipality has to be bestowed with such powers in implementing the scheme by an act of Legislature. There is absolutely no piece of legislation in the present case, which, empowers the Municipality to implement the Scheme as envisaged under Article 243 W. Thus, for implementation of scheme, there has to be a legislation enacted by the competent State Legislature which is missing in the present case and hence, the scheme deserves to be quashed and set aside.

11. Mr. Oza has invited our attention to the statement of objects / reasons to 73rd and 74th amendment to the Constitution of India. He has also invited our attention to the speech of Minister of Rural Development and Report of National Commission for review of working of the Constitution. On the basis of these documents as well as the authorities, Mr. Oza has strongly urged that the present Town Planning Scheme which is based on the development plan prepared by the area development authority is contrary to the constitutional provisions and hence, it deserves to be quashed and set aside. He has further submitted that as per the constitutional mandate contained in Article 243 ZE, the State Government

has failed to constitute the Committee for Metropolitan area and after that amendment, only the committee is empowered to prepare the development plan for the entire area and in absence of such committee as well as development plan, no scheme can be said to be in existence. He has, therefore, submitted that the present scheme deserves to be quashed and set aside.

12. The use of the word 'may' in Article 243 ZE shall be read as 'shall' and no discretion is left with any one as it is constitutional mandate to make provision with respect to the composition of the Metropolitan Planning Committee. In support of this submission, Mr. Oza has relied on the decision of the Hon'ble Supreme Court in the case of **Sub-Committee on Judicial Accountability V/s. Union of India and others, (1991) 4 SUPREME COURT CASES 699** wherein the Hon'ble Supreme Court has held that use of the word 'may' in clause (5) of Art. 124 indicates that for the 'procedure for presentation of address' it is an enabling provision and in the absence of the law the general procedure or that resolved by the House may apply but the 'investigation and proof' is to be governed by the enacted law. When a provision is intended to effectuate a right – here it is to effectuate a constitutional protection to the Judges under Article 124 (4) – even a provision as in Article 124 (5) which

may otherwise seem merely enabling, becomes mandatory. The exercise of the powers is rendered obligatory. The use of the word 'may' in Clause (5) does not, therefore, necessarily indicate that the whole of clause (5) is an enabling provision leaving it to the Parliament to decide whether to enact a law even for the investigation and proof of the misbehaviour or incapacity or not.

13. Mr. Oza further submitted that the Town Planning Scheme must be framed in the manner in which it is laid down under Article 243 ZE of the Constitution. The manner of finalizing the scheme is prescribed in the Article 243 ZE of the Constitution and hence, the act must be done in that manner only. He relied on the decision of the Hon'ble Supreme Court in the case of **Babu Verghese and others V/s. Bar Council of Kerala and others, (1999) 3 SUPREME COURT CASES 422**, wherein it is held that it is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor, (1875) 1 Ch D 426 which was followed by Lord Roche in Nazir Ahmad v. King Emperor, 63 Ind App 372 : AIR 1936 PC 253 who stated as under:

"*Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.*"

This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, AIR 1954 SC 322 and again in Deep Chand v. State of Rajasthan, AIR 1961 SC 1527. These cases were considered by a Three Judge Bench of this Court in State of Uttar Pradesh v. Singhara Singh, AIR 1964 SC 358 and the rule laid down in Nazir Ahmad's case (supra) was again upheld. The rule has since been applied to the exercise of jurisdiction by Courts and has also been recognized as a salutary principle of administrative law.

14. Mr. Prashant G. Desai, learned advocate appearing for the Ahmedabad Municipal Corporation, on the other hand, strongly opposed granting of any relief to the petitioners in the present petition. He relied on the affidavit-in-reply filed on behalf of the respondent – Corporation. He has further submitted that the Town Planning Scheme No. 49 is sanctioned as preliminary scheme and it has become part of the Act under Section 65 (3) of the Gujarat Town Planning and Urban Development Act. He has further submitted that the Ahmedabad Municipal Corporation is the implementing authority of the Town Planning Scheme and the Corporation is bound to implement the Town Planning Scheme sanctioned by the State Government under Section 65 of the Act. He has further submitted that as held by the Hon'ble Supreme Court in the case of **Municipal Corporation for Greater Bombay**

and another V/s. Advance Builders (India) Private Limited and others, AIR 1972 SC 793, the Corporation is under obligation to perform its duties in accordance with the provisions of the Act. The responsibility of removing the hut, sheds, stables and other structures which contravene the scheme is that of the Corporation. The Hon'ble Supreme Court has directed the Corporation to remove the hutments within one year in the said case. He has, therefore, submitted that it is the duty of the Corporation to implement the Town Planning Scheme. The petitioners are admittedly on a Town Planning Scheme road which has become final and, therefore, the argument that the Corporation is arbitrarily or malafide removing the petitioners cannot be sustained.

15. Mr. Desai has further submitted that though the contention was raised before the Court that the petitioners are the owners of a particular portion of the land, no such evidence is produced before the Court. The preliminary scheme is sanctioned and no objections were taken by the petitioners at any point of time and, therefore, at this stage such argument cannot be sustained. The petitioners were given notice under Section 68 read with Rule 33 (old Section 53 read with Rule 27) and after following the due procedure of law, the Corporation is removing the shops-cum-residence of the petitioners.

16. With regard to the arguments raised by Mr. Oza in respect of Articles 243 ZE, Mr. Desai has raised preliminary objection that no prayer is made by the petitioners asking the Government to form Metropolitan Planning Committee. Not only that the Gujarat Town Planning and Urban Development Act (Old Bombay Town Planning Act, 1954) was held to be a valid law in various supreme Court decisions. The object and purpose of Article 243 ZE is entirely different from the object and purpose of the Gujarat Town Planning and Urban Development Act, 1976 and, therefore, it has nothing to do with the provisions of the Gujarat Town Planning Act. Mr. Desai has further submitted that even as per the provisions contained in Article 243 ZE, the Town Planning Act is not the law relating to municipality. In the case of **Maneklal Chhotalal V/s. M. G. Makwana, AIR 1967 SC 1373**, the Constitutional Bench of the Hon'ble Supreme Court has held that the state legislature is competent to legislate the Town Planning Act either under Entry 18 of List-II or under Entry 20 of List-III. It is also held therein that the planning has an object of social and economic aim. Socially successful planning tends to make lives happier because it results in physical environment and the economic result of good planning, of course conduced to increase happiness. He has, therefore, submitted that the Town Planning Act is not the

law relating to municipalities which is inconsistent with the provisions of this part of the Constitution.

17. Mr. Desai has also invited the Court's attention to the provisions contained in Article 243 W wherein it is provided that the legislature of a state may by law, endow the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self Government and such law may contain the provisions for devolution of powers and responsibilities upon municipalities subject to such condition as may be specified therein, with respect to (i) preparation of plans for economic development and social justice and (ii) the performance of functions and implementation of the Schemes as may be entrusted to them including those in relation to the matters listed in the 12th Schedule to the constitution. The matter came up before the Hon'ble Supreme Court in respect of the Maharashtra Town Planning Act in the case of **Shanti G. Patel and others V/s. State of Maharashtra and others, 2006 (2) SCC 505**, wherein it is held that in view of Article 243 W, the Maharashtra Town Planning Act does not ipso facto become ultravires the constitution. Mr. Desai has further submitted that there is clear distinction between economic development and social justice on the one hand, being functions of Municipalities as contemplated under Article 243 W and the

functions of Metropolitan Planning Committee as contemplated under Article 243ZE. The Hon'ble Supreme Court has held that it is economic and social development in respect of the Town Planning Act.

18. Mr. Desai has further submitted that without challenging the provision of the Act and rules made thereunder, challenging the Town Planning Scheme is not permissible in view of the settled legal position that no petition for challenging the scheme can be entertained under Article 226 of the Constitution of India once it has become part of the Act. Mr. Desai has further submitted that the petitioners have not specified that which development plan they are challenging nor they have prayed for any such relief in the petition. The duties of the Metropolitan Planning Committee are enumerated in Article 243 ZE of the Constitution wherein they are required to consider the plan prepared by the Municipalities and the Panchayats in the Metropolitan area and hence, ultimately the Metropolitan Planning Committee is required to see the common interest between the Municipality and the Panchayat and overall object and priority set up by Govt. of India and the Govt. of State and further extend nature of investigation likely to be made in the Metropolitan area by the agency of the Government of India and the State Government. The object and purpose of

Metropolitan Planning Committee and the Town Planning Act is entirely different and there is no inconsistency between the two and, therefore, the argument of the petitioners are not sustainable. He has, therefore, submitted that taking any view of the matter either on facts or in law, the petitioners are not entitled to claim any relief and hence, the petition deserves to be dismissed.

19. The constitutional validity of the Bombay Town Planning Act, 1954, (as amended by Gujarat Act 52 of 1963) has come up for consideration before the Hon'ble Supreme Court in the case of **Maneklal Chhotalal and others V/s. M. G. Makwana and others, AIR 1967 SUPREME COURT 1373** and while upholding its validity, the Hon'ble Supreme Court has observed that the principles to be borne in mind in applying Arts. 14 and 19 of the Constitution are now well settled. A fundamental right to acquire, hold and dispose of property can be controlled by the State only by making a law imposing, in the interest of the general public, reasonable restrictions on the exercise of the said right. Such restrictions on the exercise of a fundamental right shall not be arbitrary, or excessive, or beyond what is required in the interest of the general public. The reasonableness of a restriction shall be tested both from substantive and procedural aspects. If an uncontrolled or unguided power is conferred, without any

reasonable and proper standards or limits being laid down in the enactment, the statute may be challenged as discriminatory. After discussing at great length the relevant provisions of the Act as well as the Rules framed thereunder, the Hon'ble Supreme Court has come to the conclusion that having due regard to the substantive and procedural aspects, it is clear that the Act imposes only reasonable restrictions, in which case, it is saved under Art. 19(5) of the Constitution. The considerations referred to above will also show that the grievance that Art. 14 is violated, is also not acceptable.

20. After having heard the learned advocates appearing for the respective parties and after having gone through the memo of petitions, affidavit-in-reply, rejoinder affidavit as well as the documents attached therewith and after having given our serious thought to the statutory provisions as well as the constitutional provisions and the authorities cited before us, we are of the view that the petitioners have challenged the procedure of finalization of Town Planning Scheme and also the constitutional validity of such scheme in view of the 73rd and 74th Amendment made to the Constitution of India.

21. As far as the procedure of finalisation of Town Planning Scheme is concerned, the petitioners have raised two points, namely,

(i) The State Government has not followed due procedure of law at the time of finalising the Town Planning Scheme No.49 of Rakhial (East);

(2) The preliminary Town Planning Scheme has been sanctioned in such a manner that the straight road proposed in the draft scheme is given curvature and as a result thereof, the shops-cum-residence of the petitioners are greatly affected and this was done in malafide manner and only with a view to favour the members of Kamdar Nagar Society.

22. The respondent authorities have come forward with an explanation and we are in full agreement with them that they have followed due procedure as prescribed under the statute while finalising the Town Planning Scheme No. 49 of Rakhial (East). It appears from the record that at every stage, the required notices were issued and served. They have issued individual notices. Adequate publication was given in the Newspaper as well as in the State Government Gazette. The details furnished before the Court clearly reveal that development plan was sanctioned on 02.11.1987. Ahmedabad Municipal Corporation by its Resolution No. 880 declared its intention on 27.01.1989 to prepare Town Planning Scheme No. 49, Rakhial (East). The notice was published in “Gujarat Samachar” and “Jayhind” on 06.02.1989 declaring the intention to prepare a Town

Planning Scheme. The notice to prepare Town Planning Scheme was pasted at the public places on 10.02.1990. The affected persons were heard in the meeting by the Corporation on 25.05.1990. The draft Town Planning Scheme was prepared and submitted to the State Government for its sanction on 31.12.1990. The State Government sanctioned the draft Town Planning Scheme by its Notification dated 08.04.1992. The Town Planning Officer was appointed on 27.07.1992. The Town Planning Officer had issued public notice in "Sandesh" newspaper on 30.01.1993 inviting objections and suggestions from the affected persons. Individual notices were issued to the owners of the land in dispute on 04.01.1994. Again newly appointed Town Planning Officer had issued public notice in "Jansatta" newspaper on 25.05.1996 inviting objections, if any, against the draft Town Planning Scheme. Individual notices were issued to the original owners as well as the President and Secretary of the Purnima Nagar Society on 03.11.1998 and their objections were invited with regard to reconstitution of plots, allotment of final plots and the change in the Town Planning Scheme. Public notice in "Gujarat Samachar" was published on 09.03.1999 inviting objections from the affected persons. The petitioners were personally heard by the Town Planning Officer on 04.08.1999. Representation was made by the petitioners to the Town Planning Officer on 16.08.1999.

Along with the said representation, the petitioners had produced a map. The owners of the land were given notices on 28.11.2000 with regard to allotment of final plots, reconstitution of plots and change in Town Planning Scheme. Again, a representation was made on 06.12.2000 to the Town Planning Officer by the residents of Purnima Nagar Society in which the present petitioners are having their houses. Again the notices were issued to the owners of the land on 02.07.2001. Notice was published in "Gujarat Samachar" newspaper on 01.08.2003 to the effect that the preliminary scheme is being submitted to the State Government. The notice was published in the Gujarat Government Gazette on 21.08.2003 to the effect that the preliminary Scheme is being submitted to the State Government. Form No. J was issued to the owners on 30.08.2003. However, as they had refused to accept its notice, the same was pasted on a conspicuous place. Since the petitioners have claimed to reside at that place, it is presumed that they must be aware of the same. Preliminary scheme got sanctioned on 20.02.2004. Individual notices were served to the original owners on 12.08.2004 by pasting the same at the conspicuous place of Purnima Nagar Society. Notice was published in "Gujarat Samachar" newspaper and "Gujarat Today" on 15.09.2004 inviting objections and suggestions with regard to the valuation and compensation. Notice was also published in "Western Times"

and “Sandesh” newspapers on 17.10.2004 and 18.10.2004 respectively declaring the decision taken by the Town Planning Officer. It is mentioned therein that the aggrieved party should approach Appellate Board under Section 54 of the Act. The same notice was also published in the State Government Gazette on 18.10.2004. The same notice was also served to the owners on 27.10.2004. Notification was published in the State Government Gazette on 12.04.2006 that the State Government has sanctioned the final Town Planning Scheme.

23. On perusal of all these events, it becomes clear that all the concerned persons were duly served with the notices prescribed under the Act. Hence, there is no substance in the contention with regard to non-service of notices and their ignorance about the development in making of Town Planning Scheme.

24. As far as the petitioners' contention regarding discriminatory treatment meted out to them is concerned, it is urged on behalf of the respondents before us that the change in question in the Scheme is carried out bonafide after considering all the relevant facts and after hearing all the concerned persons. The draft plan of Town Planning Scheme was prepared wherein 30 meter road as shown in the map

was proposed. However, the said 30 meter road was meeting one 18 meter road on South-West side and one 60 meter road on West-North side. After preparation of the draft Town Planning Scheme, the Town Planning Officer had invited objections and suggestions from all the concerned persons. On close scrutiny, it was realized that if the 18 meter road is widened and is converted into 30 meter road, the existing construction would not suffer as badly as they would if 2 roads of 18 meters as well as 30 meter are constructed. Hence, at the time of finalising the Town Planning Scheme, the Town Planning Officer has considered that which construction is authorized and which construction is unauthorized. An attempt was made by the Town Planning Officer to see that the authorized construction remains least affected. The Town Planning Officer had observed in the case file of Revenue Survey No. 191 that the petitioners and the original land owners have failed to produce any documentary evidence to show that their construction is legal and authorized. The said statement was recorded even in the redistribution statement of the said land. In the redistribution statement of the said land, it was specifically observed by the Town Planning Officer that the construction which is being affected is unauthorized. Even on perusal of village Form No. 7 & 12, it was clear that from the total land of 11,180 Sq. Mts., about 5042.55 Sq. Mts. Land is vested in

the State Government. Despite this fact, construction was carried out on the said Government land. Thus the construction of the said Purnima Nagar Society in which the petitioners are residing is clearly illegal and unauthorized according to the respondent authorities. Even with regard to the petitioners' contention that in the draft scheme, only front portion of the petitioners' land admeasuring about 10 to 15 feet was included in the 30 meter road and hence, the petitioners did not raise any objection at the relevant time, the respondent authorities have come out with the explanation that 30 meter road was passing through the Purnima Nagar Society. The houses from Serial Nos. 1 o 9 were completely going in the 30 meter town planning road whereas major portion of Sr. Nos. 10 to 14 was included in the 30 meter Town Planning Road. On 16.08.1999, the petitioners had made representation to the Town Planning Officers and with the said representation, they had produced a map in which they had shown the above facts. As a matter of fact, objections were raised by the petitioners and they were duly considered by the Town Planning Officer in accordance with law. With regard to curvature of road, it was stated that the road was curved with a view to see that on eastern side, it meets the traffic island and on western side, it meets the 60 feet road, after 60 meter wide highway road is crossed. The road is slightly curved with a planning view

and to see that the existing 18 meter road and existing Naliya land are used for the construction of the road and the constructed houses are least affected. It was also contended that there existed a curved road which is used as a part of new 30 meter curved road. Thus, the Town Planning Officer had reconstituted the final plots and roads in such a manner that existing roads and Naliya land are used in the 30 meter road to the maximum possible extent and existing construction of the houses got least affected. Even with regard to an allegation against the respondent authorities to have made a favour to the members of the Kamdar Nagar Society, the respondent authorities have clarified that the houses of Kamdar Nagar Society are not benefited in any manner by the reconstitution of the plan. In the draft Town Planning Scheme, houses of the Kamdar Nagar Society were not going in the 30 meter road and even after the change in the Town Planning Scheme, they are not affected. Thus, it appears to us that the decision taken by the respondent authorities is absolutely bonafide and it was taken after considering all the relevant technical aspects of the matter. Such a decision could not have been found fault with.

25. As far as challenge to the constitutional validity of the Scheme is concerned, it is necessary to have a close look at the provisions contained in Article 243ZE of the Constitution

of India. Part IX-A is inserted to the Constitution by the Constitution (74th Amendment) Act, 1992 with effect from 01.06.1993. This part deals with the municipalities. Article 243ZE deals with Committee for Metropolitan Planning. Sub-clause (1) of this Article states that there shall be constituted in every Metropolitan area, a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole. Sub-clause (2) of this Article casts a duty on the Legislature of a State to make provisions, by law with respect to the composition of the Metropolitan Planning Committees, the manner in which the seats in such Committees shall be filled, the representation, in such Committees of the Government of India and the Government of the State, the functions relating to planning and coordination for the Metropolitan area, the manner in which the Chairpersons of such Committees etc. Sub-clause (3) of this Article discusses about the aspects which are to be taken into consideration by every Metropolitan Planning Committee, in preparing the draft Development Plan. Sub-clause (4) makes the provision with regard to forwarding of development plan to the Government of the State. Based on this Article, it is the submission of Mr. Oza that it is a constitutional mandate to have a Metropolitan Planning Committee in every Metropolitan area. Neither the Metropolitan area is constituted nor the Metropolitan

Planning Committee is formed despite there being the constitutional mandate since 1993 and hence, the present Town Planning Scheme is ultravires the constitution. In support of this argument, he has also relied on the provisions contained in Article 243 ZF which deals with continuance of existing laws and Municipalities. It starts with non-obstente clause and says that notwithstanding anything in this part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (74th Amendment) Act, 1992, which is inconsistent with the provisions of this part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier. Since (74th Amendment) Act, 1992 commenced with effect from 01.06.1993, the Scheme remained in force upto 01.06.1994 only and thereafter, it did not continue to be in force. The submission of Mr. Oza was that after the 74th Amendment was carried out in the Constitution, which came into force with effect from 01.06.1993, only Metropolitan Planning Committee will have authority to prepare the plan and forward it under Article 243 ZE. He has further contended that in view of the same, the Town Planning Scheme which has been prepared in the development plan which is not prepared and forwarded by the Committee for

Metropolitan Planning is a nullity and, therefore, no action can be taken if the Town Planning Scheme is prepared in the development plan which is not consistent with the mandate of Article 243 ZE. It was also contended that as per Article 243 W, no piece of legislation empowers the Municipality to implement the Scheme as envisaged under Article 243 W. To examine this argument of Mr. Oza, it is necessary to have a look at the draft development plan which was prepared and submitted by the Ahmedabad Municipal Corporation to the State Government in the year 1982. The draft development plan was sanctioned by the State of Gujarat on 12.08.1983. The intention to prepare the draft Town Planning Scheme was submitted by Ahmedabad Municipal Corporation to the State Government in the year 1989. The said plan was sanctioned by the State Government on 08.04.1992. Thus, it is clear that the development plan and draft Town Planning Scheme have been sanctioned prior to 01.06.1993 i.e. the date on which 74th Constitutional amendment came into force. The said constitutional amendment has, therefore, no effect on the draft plan which is already sanctioned prior to coming into force of the said constitutional amendment. Even otherwise, the issue has come up before the Hon'ble Supreme Court in the case of **Shanti G. Patel and others V/s. State of Maharashtra and others, (2006) 2 SCC 505** wherein it is held that the existing provisions of the statutes which govern

the field relating to urban planning and / or regulation of land, use and construction of buildings etc. would continue to operate in that field unless a statute is enacted by State Legislature in terms of Article 243 W. The Court further held that Article 243 W is merely an enabling provision and the State is not obliged to provide for such a statutes. High Courts / Supreme Court can only issue a direction to State to pass appropriate legislation in terms of Article 243 W and 12th Schedule. Existing laws cannot be struck down only on that premise. The Court also makes it clear that the Constitution (74th Amendment) Act, 1992 in any event, does not envisage that the existing laws would become non-operative or a vacuum would be created in the matter of enforcement of existing laws relating to urban planning and/or regulation of land, use and construction of buildings etc. In view of this decision, there is no force or substance in the challenge made to the Town Planning Scheme No. 49, Rakhial on the ground of 74th constitutional amendment.

26. Since none of the contentions raised by the petitioners in the present petitions are sustainable either on facts or in law, the petitions are dismissed. Notice discharged without any order as to costs.

Sd/- Sd/-

[M. S. SHAH, J.] [K. A. PUJ, J.]

27. At this stage, Mr. Y. N. Oza with Ms. Srushti A. Thula requests for a certificate fitness under Article 132 of the Constitution of India and also prays for extension of the ad-interim relief which was operating during pendency of the petition.

28. Mr. P. G. Desai, learned counsel for the Corporation opposes the request.

29. Having heard the learned counsel for the parties, we do not find that the case involves a substantial question of law as to interpretation of the Constitution which needs to be decided by the Apex Court, because the question has already been decided by the Apex Court in **Shanti G. Patel & Ors. V/s. State of Maharashtra and Ors., 2006 (2) SCC 505**.

30. As regards the request for extension of the ad-interim relief, in the facts and circumstances of the case, and considering the fact that the petitioners are hutment dwellers, the ad-interim relief granted earlier shall continue till 30th September, 2007.

Sd/-

[M. S. SHAH, J.]

Sd/-

[K. A. PUJ, J.]

Savariya